



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201427028

APR 07 2014

T: EP: RA: T3

Uniform Issue List: 408.03-00

Legend:

| | | |
|--------------------|---|-------------------------|
| Taxpayer A | = | ***** |
| Financial Entity B | = | ***** |
| Advisor C | = | ***** |
| Property D | = | ***** |
| Property E | = | ***** |
| Property F | = | ***** |
| IRA X | = | ***** ***** ***** |
| IRA Y | = | ***** ***** ***** |
| Amount 1 | = | ***** |
| Amount 2 | = | ***** |
| Amount 3 | = | ***** |

Dear *****:

This is in response to your request dated April 23, 2013, submitted on your behalf by your authorized representative, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalties of perjury in support of the ruling requested:

Taxpayer A arranged for a transfer of Amount 1 from Taxpayer's IRA X, as well as a transfer of Amount 2 from IRA Y, to Financial Entity B, believing such transfers to be trustee-to-trustee transfers to a new individual retirement account (IRA) established with Financial Entity B. Taxpayer A asserts that he was prevented from accomplishing a trustee-to-trustee transfer or a rollover of these distributions due to fraud on the part of Financial Entity B and Advisor C.

In 2008, Taxpayer A engaged in discussions with Advisor C, the president of Financial Entity B, about investing some of Taxpayer A's IRA assets in real estate. Advisor C told Taxpayer A that he would need to create a self-directed real estate IRA, which would then invest in real estate through a limited liability company. Advisor C told Taxpayer A that Financial Entity B was providing custodial services to other self-directed real estate IRAs, and that it could do the same for Taxpayer A.

Taxpayer A entered into an "Investment Management Agreement for Self-Directed Real Estate IRA" with Financial Entity B, dated April 28, 2008. Under this agreement, Financial Entity B would serve as a custodian, and could receive assets through an IRA rollover or a contribution to an IRA. Financial Entity B would also charge annual fees "for its services as Custodian of Self-Directed Real Estate IRA assets." Advisor C also sent Taxpayer A forms to fill out and sign to begin the setup of his IRA.

Advisor C then assisted Taxpayer A in establishing the "Taxpayer A Real Estate IRA, LLC", which was formed for the purpose of holding real estate purchased with funds from Taxpayer A's new IRA.

On May 12, 2008, at Taxpayer A's direction, the custodian of IRA X issued a check for Amount 1 from IRA X, made payable to Financial Entity B, f/b/o Taxpayer A, which was intended to be a trustee-to-trustee transfer to Taxpayer A's new IRA at Financial Entity B. Taxpayer A received a confirmation of deposit showing that this amount "had been credited to your Self-Directed Real Estate IRA Account."

On May 16, 2008, at Taxpayer A's direction, the custodian of IRA Y issued a check for Amount 2 from IRA Y to Taxpayer A's account at Financial Entity B, also intended to be a trustee-to-trustee transfer.

The amounts transferred from IRA X and IRA Y to Taxpayer A's account at Financial Entity B totaled, in the aggregate, Amount 3. These amounts were used to purchase Properties D, E, and F. The properties were purchased by the Taxpayer A Real Estate IRA, LLC.

Following the purchase of Properties D, E, and F, Taxpayer A received quarterly statements describing Taxpayer A's account with Financial Entity B as an IRA account. The statements included Properties D, E, and F as assets of the account.

Despite these representations, Financial Entity B was not qualified to serve as a custodian of an IRA, and had not actually established a qualifying IRA.

In February 2011, Advisor C was charged with securities fraud and mail fraud under federal law. Taxpayer B learned that he was one of several similarly-situated individuals affected by what the court later characterized as "a massive Ponzi scheme" by Advisor C. Advisor C pled guilty to the fraud charges, and agreed to forfeit to the federal government his interest in numerous properties, including those which Financial Entity B had represented it held as an IRA custodian. Properties D, E, and F were among the properties Advisor C agreed to forfeit to the government.

Individuals whose property had been held by Financial Entity B in what it had represented were IRA accounts challenged the government's right to take such property through forfeiture. Prolonged litigation then ensued. Ultimately, in February 2013, the court rejected the government's claim that such properties were subject to forfeiture and removed them from the forfeiture order.

Taxpayer A filed this request promptly after issuance of the court's order.

Based on these facts and representations, you request a ruling that the Internal Revenue Service waive the 60 day rollover requirement contained in section 408(d)(3) of the Code with respect to the May 12, 2008 distribution of Amount 1 from IRA X, and the May 16, 2008 distribution of Amount 2 from IRA Y.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if:

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use

of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

Revenue Ruling 78-406, 1978-2 C.B. 157, provides, in general, that the direct transfer of funds from one IRA trustee to another IRA trustee does not result in such funds being treated as paid or distributed to the participant and such transfer is not a rollover contribution.

Section 408(a) of the Code defines an individual retirement account as a trust that meets certain conditions, including the requirement that the trustee of the trust must be a bank (as defined in Section 408(n) of the Code) or other person who demonstrates, to the satisfaction of the Secretary, that the manner in which he will administer the account will be consistent with the requirements of such section. Section 408(h) provides that a custodial account may be treated as a trust if the custodian meets those requirements, and if the account would otherwise satisfy the 408(a) requirements. Section 1.408-2(e) of the Income Tax Regulations sets forth stringent requirements an applicant must meet in order to be approved to serve as an IRA trustee or custodian.

The information presented and documentation submitted by Taxpayer A is consistent with Taxpayer A's assertion that he intended to make a trustee-to-trustee transfer of Amount 1 from IRA X, and a trustee-to-trustee transfer of Amount 2 from IRA Y, to a new IRA established with Financial Entity B, and that he reasonably believed that a new IRA had been established. The information presented and documentation submitted is also consistent with the assertion that Taxpayer A's failure to accomplish a trustee-to-trustee transfer or a timely rollover of such amounts was due to fraud on the part of Advisor C.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 1 from IRA X, and the distribution of Amount 2 from IRA Y. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute up to Amount 3 (the total of Amounts 1 and 2) into a rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, the contribution of up to Amount 3 will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 408(a)(6) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

If you wish to inquire about this ruling, please contact ***** (ID *****) at (**) ***-****. Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,



Laura B. Warshawsky, Manager,
Employee Plans Technical Group 3

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

cc: *****